

**Brookline Board of Appeals
April 28, 2016, 7:00 PM
Public Hearing**

**333 Washington Street
6th Floor Selectmen's Hearing Room**

Board Members Present: Jonathan Book (Chairman), Christopher Hussey, Johanna Schneider
Staff Present: Michael Yanovitch (Build. Dept.), Jay Rosa (Planning Department)

90 Ivy Street

Proposal: Construct a 10-foot tall privacy wall along portions of the side and rear lot line

Zoning District: S-7 (Single-Family)

Precinct: 1

Board Decision: Relief request **granted**, subject to conditions

36 Vernon Street

Proposal: Construct a second-story deck above existing bay

Zoning District: F-1.0 (Three-Family)

Precinct: 7

Board Decision: Relief request **granted**, subject to conditions

1248 Beacon Street

Proposal: Construct an addition and change occupancy from three-family to four-family

Zoning District: M-1.5 (Apartment House)

Precinct: 2

Board Decision: Relief request **granted**, subject to conditions

Minutes shall be posted on the Town of Brookline website (<http://www.brooklinema.gov/564/Zoning-Board-of-Appeals>) upon approval. Draft minutes shall be made available upon request.

Decisions shall be posted on the Town of Brookline website (www.brooklinema.gov). Appeals, if any, shall be filed with land court or superior court within twenty days after the date of filing of such notice in the office of the town clerk.

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Staff Present – Michael Yanovitch (Build. Dept.), Jay Rosa (Planning Dept.)

7:00PM

90 Ivy Street – Construct a 10-foot tall privacy wall in the rear and side yards

Board Chairman Book opened the hearing and called case #2016-0017. Mr. Book reviewed standard hearing procedure.

Project architect, Tim Burke of Timothy Burke Architecture (142 Berkeley St, Boston, MA) waived the reading of public hearing notice for the record and submitted a letter of project support from a resident of 96 Ivy Street and general property photos to the Board. Mr. Burke stated that an existing 10 foot tall stockade fence sits at the rear and side of the subject property. This fence is in disrepair and the Petitioner wishes to replace this privacy feature with a 10 foot tall brick wall. Mr. Burke stated that the 90 Ivy Street property is located at the far southeast corner of the Cottage Farm neighborhood and directly abuts more apartment house and commercial related zoning districts. Mr. Burke described the proposed brick wall as a method to maintain privacy and “firm up the edge” that delineates the residential district from the adjacent commercial district.

Mr. Burke further explained that the petitioner worked closely with abutting residents on the wall design and the project received unanimous approval from the Preservation Commission in February of 2016. Subsequently, the Planning Board unanimously recommended approval of the 10 foot wall in March of 2016. Mr. Burke described the wall design as traditional garden style with pilasters, bluestone caps, and an entrance gate. The wall would be located along a portion of the rear and side (east) lot lines facing St. Marys Court.

Board Chairman Book requested additional detail regarding the purpose of the wall itself. Mr. Burke stated that the privacy wall would specifically mitigate noise and visual impact generated from a high level of activity along St. Marys Court. Mr. Burke stated that this private way is used for parking, trash removal, and deliveries for commercial uses located along Beacon Street.

Board Member Hussey requested clarification as the exact location and length of the proposed wall. Mr. Burke stated that the wall would extend approximately 35 feet along the east side lot line and 27.5 feet along the rear lot line. The wall would extend between two existing adjacent structures to provide a consistent screened edge for the subject property.

Board Chairman Book called for public comment in favor of, or in opposition to, the Petitioner's proposal.

Nicholas Ames of 8 Park Street, Easthampton, MA spoke on behalf of the Petitioner and stated that the proposed wall would benefit the 90 Ivy Street property as well as the wider Cottage Farm neighborhood. Mr. Ames characterized the level of commercial activity along St. Marys Court as being intense and out of character with the single-family neighborhood located directly to the north.

Board Chairman Book called upon Zoning Coordinator Jay Rosa to review the findings of the Planning Board. Mr. Rosa stated that the Planning Board unanimously supported the rear-yard privacy wall. There is an existing deteriorating fence that is comparable in height and this proposal will certainly improve that condition. Board Members were supportive of the proposed height because St Marys court is highly active in terms of trash removal, commercial deliveries, and vehicular activity. The subject lot also sits directly at the border between a single-family district and local business district.

Therefore, the Planning Board recommended approval of the site plan by Elliott Paturzo, dated 1/13/15, and privacy wall elevations by Timothy Burke, dated 12/28/15, subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit a final site plan, and privacy wall plans, subject to review and approval by the Assistant Director for Regulatory Planning.
2. Prior to the issuance of a building permit, the applicant shall submit a final landscaping plan including all counterbalancing amenities, subject to review and approval by the Assistant Director for Regulatory Planning.
3. Prior to the issuance of a building permit, the applicant shall submit to the Building Commissioner for review and approval for conformance to the Board of Appeals decision:
1) a final site plan, stamped and signed by a registered engineer or land surveyor, 2) final floor plans and elevations, stamped and signed by a registered.

Board Member Hussey suggested that the requirement of a floor plan is not appropriate in this instance.

Mr. Burke requested that the requirement for a final site plan be removed from the record because the Petitioner is seeking special permit relief for the wall height itself rather than setback relief for a structure located within required side or rear yard. In Mr. Burke's opinion no counterbalancing amenities are required for the Board to find that the proposal is worthy of the zoning relief as requested.

Board Chairman Book requested that Deputy Building Commissioner Michael Yanovitch review the findings of the Building Department. Mr. Yanovitch stated that the Building Department also has no object to the relief requested. Mr. Yanovitch confirmed that two forms of relief may be applied to this relief under Zoning By-Law Section 5.74 (wall height) or Section 5.43 (side/rear yard setbacks). Mr. Yanovitch also confirmed that counterbalancing amenity may not be required if the

Board finds that the privacy wall serves to mitigate adverse impact associated with noise and safety.

Board Deliberation

Board Member Schneider agreed that the 10-foot privacy wall is adequate and appropriate to mitigate noise and activity occurring on St. Marys Court. Ms. Schneider acknowledged that the high level of commercial activity is somewhat atypical in terms of abutting a single-family residential district. Ms. Schneider believed that the privacy wall would be a benefit for the subject property as well as the general Cottage Farm neighborhood.

Mr. Hussey supported special permit relief for the wall height itself in accordance with By-Law Sections 5.62 and 5.74. Mr. Hussey agreed that the proposed wall height is warranted to mitigate noise and impact as required for the grant of a special permit.

Ms. Schneider concurred with Mr. Hussey's comments and further stated that the privacy wall location is appropriate to mitigate the impact of traffic, loading, and trash removal on St. Marys Court.

Chairman Book agreed with Board Member comments and he concluded that the general standards required for the grant of a special permit under By-Law Section 9.05 are also satisfied. Mr. Book further supported modified permit conditions. Mr. Book requested to strike stated condition #2 and modify stated condition #3 to eliminate the need for a final floor plan.

The Board voted unanimously to grant special permit relief, subject to the following revised conditions:

- 1. Prior to the issuance of a building permit, the applicant shall submit a final site plan, and privacy wall plans, subject to review and approval by the Assistant Director for Regulatory Planning.**
- 2. Prior to the issuance of a building permit, the applicant shall submit to the Building Commissioner for review and approval for conformance to the Board of Appeals decision: 1) a final site plan, stamped and signed by a registered engineer or land surveyor, 2) final elevations, stamped and signed by a registered architect, and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.**

36 Vernon Street – Legalize a second story deck above an existing bay

Chairman Book called case #2016-0012 and reviewed standard hearing procedure.

The Petitioner's Attorney, Robert Allen of the Law Office of Robert Allen Jr. (300 Washington Street, Brookline, MA) waived the reading of public hearing notice for the record and introduced property owner David Schwartz and project architect Sven Heistad.

Attorney Allen stated that the subject property is located at the intersection of Vernon Street and Harris Street near Coolidge Corner. This location results in the creation of two front yards. An existing ground-floor sunroom is located 5.3 feet from the Harris Street front lot line. Attorney Allen confirmed that this setback distance is a pre-existing nonconformity and the Petitioner wishes to construct a 14'-6" x 8'-8" deck above this sunroom, thus extending the setback nonconformity. Attorney Allen confirmed that the deck, and associated safety railing, has already been constructed, in accordance with plans approved by the Building Department, and now the Petitioner is seeking to receive necessary relief to legalize this deck. Attorney Allen further stated that he is not aware of any opposition to this project from neighboring residents and the Petitioner is proposing to install a wood board fence along the side lot line to serve as counterbalancing amenity for this setback relief.

Attorney Allen reviewed project compliance with Zoning By-Law Section 9.05 standards for the grant of a special permit.

Board Chairman Book requested additional information regarding the need for counterbalancing amenities because this is a request to legalize an existing deck. Deputy Building Commissioner Michael Yanovitch stated that expanded landscaping was included in during prior renovation of the two-family structure. The property owner spoke with abutting residents about a wood board fence but that feature has not been installed. The Petitioner now intends to install the fence as previously agreed upon. For this reason, the fence itself, rather than landscaped features, is proposed as a counterbalancing amenity for the requested setback relief.

Board Member Schneider questioned if the original plans submitted to the Building Department included the second-story deck and the setback violation was not identified. Mr. Yanovitch confirmed that the setback violation was not identified at the time the building permit was issued.

Board Chairman Book called for public comment in favor of, or in opposition to, the Petitioner's proposal.

David Schwartz, of 555 Columbus Avenue, stated that he supported the fence design and materials as proposed.

Chairman Book requested that Zoning Coordinator Jay Rosa review the findings of the Planning Board. Mr. Rosa stated that the Planning Board unanimously supported the legalization of this second story deck. The deck follows the dimensions of an existing bay below and is not anticipated to have significant adverse impact on abutting residents. The applicant has also renovated significant portions of the existing structure. Board Members specifically recommended that the applicant replace a rear fence with a wooden fence to satisfy counterbalancing amenity requirements and also recommended that all imposed conditions be revised to require the submission of final plans prior to the issuance of a certificate of occupancy because the deck has already been constructed.

Therefore, the Planning Board recommended approval of the site plan submitted by Boston Survey, Inc., dated 9/17/2014, proposed site plan, floor plans and elevations submitted by The Builders Architect, dated 1/13/15, subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit a final site plan and elevations, subject to review and approval by the Assistant Director for Regulatory Planning.
2. Prior to the issuance of an Occupancy Permit, the applicant shall submit a final landscaping and fencing plan showing a wood fence, subject to review and approval by the Assistant Director for Regulatory Planning.
3. Prior to the issuance of a building permit, the applicant shall submit to the Building Commissioner for review and approval for conformance to the Board of Appeals decision: 1) a final site plan, stamped and signed by a registered engineer or land surveyor, 2) final elevations, stamped and signed by a registered architect, and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

Deputy Building Commissioner Michael Yanovitch stated that the Building Department also has no objection to the relief as requested. Mr. Yanovitch described the proposal as a simple extension of a pre-existing nonconformity. Mr. Yanovitch also reiterated the fact that the deck follows the footprint of the sunroom below.

Board Deliberation

Chairman Books suggested that a final landscaping plan should not be required because there is no clear nexus between existing landscaping features and the request to legalize an existing deck. Additionally, the Petitioner is clearly proposing fence improvements to serve as counterbalancing amenity. The fence location can be included on the final submitted site plan.

Board Member Hussey stated that he favored the requirement for final documentation of landscaping for the purpose of maintaining clear permit records. Mr. Hussey suggested that photos of existing plantings could satisfy this requirement.

Board Member Schneider agreed with Mr. Book that there is no nexus relationship between the request to legalize the deck and existing landscaping. Ms. Schneider believed that the deck is a modest proposal that satisfies the standard for the grant of a special permit. Ms. Schneider also supported fence improvements to serve as required counterbalancing amenity.

Chairman Books agreed that the setback relief requested is modest. Mr. Book stated that the general standards for the grant of a special permit, in accordance with By-Law Section 9.05 are also satisfied. Mr. Book suggested several modifications to proposed permit conditions including:

- The removal of a required landscaping plan from condition #2
- The elimination of condition #1 because construction plans have already been submitted and a construction permit was issued
- Strike clauses 1 and 2 from condition # 3 for the same reasoning

Ms. Schneider further stated that Condition #1 materials should be required prior to the issuance of a Certificate of Occupancy rather than the issuance of a building permit.

The Board voted unanimously to grant setback relief as requested, subject to the following revised conditions:

- 1. Prior to the issuance of an Occupancy Permit, the applicant shall submit a final fencing plan including a wood fence, subject to review and approval by the Assistant Director for Regulatory Planning.**
- 2. Prior to the issuance of a building permit, the applicant shall submit to the Building Commissioner for review and approval for conformance to the Board of Appeals decision: 1) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.**

1248 Beacon Street – Convert from a three-family to a four family dwelling and construct a three-family addition

Board Chairman Book called case #2016-0016 and reviewed standard hearing procedure.

The Petitioner's Attorney Jeffrey Allen of Lawson & Weitzen LLP (88 Black Falcon Avenue, Boston, MA) waive the reading of public hearing notice for the record and stated that the subject property is a three family dwelling that includes two separate lots that will be merged for this proposal.

Attorney Allen described the subject property as a corner lot with a very narrow building edge. The Petitioner is proposing to construct a three-story addition to extend from this narrow edge along James Street. This addition would result in a gross floor area of 8,999 square feet and four residential units. The proposal also requires a regrading of greenspace and parking accessible from James Street in order to provide required off-street parking associated with the additional dwelling unit. Attorney Allen stated that this regraded portion of the property and the rear façade to be replaced are in disrepair. Attorney Allen also noted that the Town has no definitive count of current parking spaces provided within this rear surface parking area.

Attorney Allen discussed potential brick or zinc building material for the proposed addition. The Petitioner and the Planning Board agreed that the addition should mimic the design of the existing structure but incorporate lighter materials to distinguish from historic features. Attorney Allen confirmed that he support Planning Board approval for the final design of the addition with significant input from abutting residents.

Project architect, Stephen Sousa of Sousa design (81 Boylston Street, Brookline, MA) further described the design of the addition, specifically highlighting the unique geometry of the existing edge and the goal to mesh the modern addition with that existing Beacon Street façade around a new "tower" corner. Mr. Sousa stated that the Planning Board did not like the updated "vocabulary" but they were satisfied with the proposed volume/massing increase. Mr. Sousa concluded his comments by describing the revised parking layout that best accommodates 4 parking spaces rather than 5 as required by the Zoning Bylaw after crediting the existing parking deficiency.

Board Member Schneider requested additional detail about the reasoning for 4 parking spaces, which would require a variance. Attorney Allen stated that 5 spaces are feasible but the Petitioner was not comfortable with the lack of vehicular circulation and landscape screening that would occur if 5 spaces were included. Attorney Allen reiterated the fact that the subject property already presents a parking deficiency, thus it is a pre-existing nonconformity that may be credited to reduce the overall amount of new parking. This credit still only reduces the need for additional parking to 5 spaces.

Attorney Allen stated that the shape and topography of the subject lot, as compared to others in the district, qualifies the project for a variance. Attorney Allen noted that the property is also in close proximity to multiple forms of public transportation.

Chairman Book reminded the Board that there must be a nexus relationship between any claims of lot uniqueness and the petitioner's ability to provide sufficient parking.

Board Member Schneider further stated that the variance requirement of hardship associated with the claim of uniqueness must also be established by the Petitioner. Ms. Schneider questioned whether the elimination of landscaped features required to create the fifth parking space is critical or more of an amenity.

Attorney Allen responded by stating that the landscaped screening is important in terms of mitigating visual impacts. Additionally, the 5 vehicle parking layout requires reduced setbacks from James Street and is less effective from a vehicular maneuverability/circulation standpoint. Attorney Allen added that special permit relief is also required for the resulting gross floor area however provided usable open space will increase based on grade changes made to the rear of the property. Attorney Allen confirmed that the Planning Board unanimously supported the design of the proposed addition in accordance with design review guidelines included in the Zoning By-Law.

Board Member Hussey suggested that the parking layout that provides 5 spaces rather than 4 appears to include a more robust landscaping plan. He also believed the angled parking to be more desirable for the lot itself. Mr. Hussey requested that the Petitioner discuss parking stall dimensions in greater detail. Attorney Allen stated that the 4-car layout includes all standard sized stalls (8.5' x 18'). The 5-car layout will include one compact space (7.5' x 16').

Chairman Book called for public comment in favor of, or in opposition to, the Petitioner's proposal.

Susan Houston of 1258 Beacon Street stated that a number of neighboring residents are familiar with the proposal and attended the previous Planning Board meeting on this matter. Ms. Houston stated that she supported the grant of zoning relief, contingent upon continued collaboration between the development team and neighboring residents. Ms. Houston described the James Street lot line as a front façade rather than a rear portion of the structure and should be designed in to reflect the character of the James Street neighborhood to the north. Ms. Houston supported final design approval by the Planning Board with public comment from residents.

Jerry Steinberg of 1258 Beacon Street concurred with Ms. Houston's comments and further stated that the 4-car parking layout is more desirable because it maintains more open space and provides room to screen vehicles.

Chairman Book requested that Zoning Coordinator, Jay Rosa deliver the findings of the Planning Board. Mr. Rosa stated that the Planning Board unanimously recommended approval of the three-story addition following two public meetings on the matter. In general, the Board felt that the proposed addition improves the somewhat awkward and deteriorating façade along James Street. Based on recommendations made at the first meeting, the architect altered the addition design and fenestration. The Board agreed that a modern style design that complements the existing structure is more appropriate than attempting to replicate historic features. The Board was also satisfied that the scale of construction and the location of the addition are unlikely to result in damage to abutting structures. Board Members did recommend that the applicant continue to work with area residents to finalize building materials and should indicate the location of trash and recycling facilities on the final submitted site plan.

Therefore, if the Board of Appeals finds that the statutory requirements for a variance are met, the Planning Board approves the plans by Sousa Design, dated 1/22/16, subject to the following conditions:

- 1) Prior to the issuance of a building permit, the applicant shall submit final elevations, including façade materials and details, subject to the review and approval of the Planning Board.
- 2) Prior to the issuance of a building permit, the applicant shall submit a final site plan, including parking, landscaping and counterbalancing amenities, and floor plans subject to the review and approval of the Assistant Director of Regulatory Planning.
- 3) Prior to the issuance of a building permit, the applicant shall submit a final construction management plan, including location of construction vehicle parking, and name and cell number of project manager, subject to the review and approval of the Building Commissioner, with a copy submitted to the Planning Department.
- 4) Prior to issuance of a building permit, the applicant shall submit to the Building Commissioner for review and approval for conformance to the Board of Appeals decision: 1) a final site plan, stamped and signed by a registered engineer or land surveyor; 2) final building elevations and floor plans stamped and signed by a registered architect; and 3) evidence the decision has been recorded at the Registry of Deeds.

Chairman Book requested that Deputy Building Commissioner Michael Yanovitch review the findings of the Building Department. Mr. Yanovitch stated that the project is well designed considering the limitations of both the site and structure. Mr. Yanovitch agreed that the requested relief is somewhat minimal, aside from the parking requests. Mr. Yanovitch stated that the town is somewhat split when considering the need for parking, particularly in areas of Town that are transit rich. Mr. Yanovitch confirmed that the Building Department has no objection to the relief, and he further supported the imposed condition requiring a construction management plan.

Attorney Allen stated that the 5-space proposal would require a special permit and is therefore the “path of least resistance” but he believed that the 4-space proposal fits the site more appropriately and is safer/more aesthetically appealing.

Mr. Hussey and Mr. Yanovitch agreed that the submitted site plan includes adequate space at the rear of the structure to safely house trash and recycling. Mr. Hussey noted that this portion of the site also provides easy access from the basement level of the structure.

Board Deliberation

Chairman Book supported Attorney Allen’s summation that the requested dimensional and floor area ratio relief are minimal in the grand scheme of the proposal. Mr. Book agreed that these special permits may be granted within the parameters of the zoning bylaw but he was troubled by the parking scheme. Mr. Book stated that the variance route is required and he was not convinced that the statutory requirements for a variance under General Law c. 40A have been satisfied.

Board Member Hussey deferred to other Board Members regarding the legal validity of the requested variance and he reiterated the feasibility of the of the 5-space option that would shift the requested relief to a special permit.

Ms. Schneider noted the unusual configuration of the lots and she felt that the proposal was well done as an infill project. The Board is generally supportive of requests for parking relief within transit rich areas and she did believe that the reduced parking count, if granted, would not derogate from the intent of the local zoning By-Law and c. 40A regulations. Ms. Schneider believed that the 5th space may be excessive on this particular lot but she stated that she did not hear a convincing argument regarding substantial hardship from the Petitioner.

Attorney Allen again restated that the 4-car configuration is intended primarily to maintain safe vehicular circulation, particularly during inclement weather. Attorney Allen further stated that the setback buffer provided by the four-car layout maintains pedestrian safety and driver site lines.

Mr. Sousa added that the 4-car layout specifically maintains a clear aisle for rear access to rowhouses along Beacon Street for a large number of residents.

Mr. Hussey supported the request for relief and stated a preference for lighter construction materials that would match the existing brick structure. Mr. Hussey felt that a brick cantilever design is not appropriate for the site.

Mr. Book and Ms. Schneider supported Attorney Allen’s description of both lot uniqueness and associated hardship.

Unanimous grant of requested relief, subject to the following revised conditions:

- 1) Prior to the issuance of a building permit, the applicant shall submit final elevations, including façade materials and details, subject to the review and approval of the Planning Board.

- 2) Prior to the issuance of a building permit, the applicant shall submit final floor plans and a final site plan including the locations of all parking, trash receptacles, landscaping, and counterbalancing amenities, subject to the review and approval of the Assistant Director of Regulatory Planning.
- 3) Prior to the issuance of a building permit, the applicant shall submit a final construction management plan, including location of construction vehicle parking, and name and cell number of project manager, subject to the review and approval of the Building Commissioner, with a copy submitted to the Planning Department.
- 4) Prior to issuance of a building permit, the applicant shall submit to the Building Commissioner for review and approval for conformance to the Board of Appeals decision: 1) a final site plan, stamped and signed by a registered engineer or land surveyor; 2) final building elevations and floor plans stamped and signed by a registered architect; and 3) evidence the Board of Appeals decision has been recorded at the Registry of Deeds.

Hearing Closed.